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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIS RAMIREZ AYALA,

Defendant and Appellant.

F058888

(Super. Ct. No. BF128634A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Colette M. Humphrey, Judge.

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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*Before Wiseman, Acting P.J., Cornell, J., and Gomes, J.

STATEMENT OF THE CASE

On July 15, 2009, appellant, Louis Ramirez Ayala, was charged in a criminal complaint with first degree murder (Pen. Code, § 187, subd. (a))¹, count one) with a special circumstance allegation (§ 190.2, subd. (a)(14)), unlawful removal or alteration of identification marks on a firearm (§ 12090, count two), being a prior felon in possession of a firearm (§ 12021, subd. (a)(1), count three), and inflicting corporal injury on the mother of the appellant's child (§ 273.5, subd. (a), count four). The complaint alleged a weapon use enhancement pursuant to section 12022, subdivision (b)(1), two alleged prior serious felony convictions within the meaning of the three strikes law (§§ 667 & 1170.12), two prior serious felony convictions within the meaning of section 667, subdivision (a), and three prior prison term enhancements (§ 667.5, subd. (b)).

On September 18, 2009, the parties entered into a plea agreement. In exchange for appellant's admission of count one, the strike allegations, and one prior serious felony conviction allegation, the remaining allegations would be dismissed. Appellant faced a sentence of 50 years to life under the agreement. Appellant executed a felony advisement, waiver of rights, and plea form wherein he acknowledged his constitutional rights, the terms of the plea agreement, the consequences of his plea, and waived his constitutional rights pursuant to *Boykin/Tahl*.² The parties stipulated to a factual basis for the plea based on the police report.

Appellant pled no contest to second degree murder in count one. Appellant admitted the two prior strike allegations and one prior serious felony conviction allegation. The remaining allegations were dismissed.

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

² *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122 (*Boykin/Tahl*).

On October 19, 2009, the court sentenced appellant to prison for 45 years to life on count one pursuant to section 667, subdivision (a), plus five years for the prior serious felony conviction. The court imposed a restitution fine, an assessment fee of \$30 pursuant to Government Code section 70373, and granted applicable custody credits.³

FACTS

At 7:54 p.m. on July 13, 2009, the Kern County Sheriff's dispatcher received a report from Annette Ayala's daughter that appellant had stabbed his wife. Investigators found appellant walking away from his home and arrested him. Appellant had blood on his clothing and body. Annette Ayala was found deceased on the floor and covered in blood. She had suffered multiple stab wounds to her upper chest and torso. The victim's daughters heard noise and the victim's plea to appellant to stop. The daughters forced a door open and saw appellant on top of their mother and blood everywhere.

APPELLATE COURT REVIEW

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on February 23, 2010, we invited appellant to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

³ Appellant's offense was committed in July 2009, after the operative date of Government Code section 70373. Because appellant's offense is a violent felony under section 667.5, subdivision (c)(1), and a serious felony under section 1192.7, subdivision (c)(1), he is not entitled to additional custody credits pursuant to the recently amended provisions of section 4019.

DISPOSITION

The judgment is affirmed.